

## **AB 1700 (Pavley)**

### **Secret Settlements**

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**Sponsor: Consumer Federation of California**

#### **PROBLEM**

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Secret settlements are an everyday occurrence in most of our courts and they can have tragic consequences. Information on defective products and other public dangers are often uncovered in the course of litigation. That information, however, is then routinely sealed away from public access under secrecy agreements between the parties. Unfortunately, when companies demand secrecy as the price of compensation for victims, the result is many deaths and injuries that could have been avoided. Recent real-world examples of secret settlements include dangerous prescription drugs such as Vioxx, Firestone tire failures, environmental polluters, and sexual abuse by clergy, foster parents and administrators of homes for the mentally disabled.

Secrecy agreements that allow companies to shield life-threatening dangers and harmful practices from public view severely jeopardize public welfare and safety. It is against the public interest to allow secrecy agreements to keep information regarding public dangers to remain secret, except in very limited circumstances upon careful independent judicial oversight and review.

#### **THIS BILL**

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This bill would ensure that information revealed in a lawsuit about the existence of a public danger, including, but not limited to, defective products, environmental hazards,

and individuals who physically harm, abuse, or molest others, that has caused and is likely to cause substantial injury or death, shall be presumed to be public information and may not be kept secret.

AB 1700 would specifically protect trade secrets, privileged information, and information the court deems should be protected.

#### **Q&A**

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**What happens if a company has a trade secret it must protect? Shouldn't this information be allowed to be kept secret?**

As noted under the bill, if a court finds that the information is a trade secret or otherwise privileged under existing law, the information will be kept secret. Moreover, other states have successfully implemented similar statutes without any negative impact. This bill will simply stop the unfortunate industry tactic of hiding illusory trade secrets to escape responsibility for dangerous products. Also, if it is a defective product or a pharmaceutical that causes life threatening reaction, there is no trade secret to protect – who would want to copy that design?

Additionally, existing law provides for the confidentiality of trade secrets in an action under the Uniform Trade Secrets Act, pursuant to a discovery protective order issued by the court to prohibit the disclosure

of a trade secret or limit its disclosure without court approval.

**Won't restricting secrecy requirements lead to more litigation and "discovery wars"?**

Florida enacted a similar approach 15 years ago, and contrary to opponents' claims, there is no evidence showing that it has created either a "litigation explosion" or "discovery wars" in that state. In fact, Florida's per capita case filings and dispositions have actually decreased by 20 percent. In California, where court rules in some jurisdictions make secrecy difficult, litigation is also down.

As one court aptly put it: "Settlements will be entered into in most cases whether or not confidentiality can be maintained. The parties might prefer to have confidentiality, but this does not mean that they would not settle otherwise. For one thing, if the case goes to trial, even more is likely to be disclosed than if the public has access to pretrial matters."

It should be noted that of the millions of documents and e-mail that is routinely turned over in discovery pursuant to a stipulated protective order, only a very small part, that represents "the existence of a public danger that has caused and is likely to cause substantial injury or death," will be subject to the presumption of public access.

Lastly, increased public access to discovery and judicial records enhances efficiency in the long-run by avoiding the multiplication of expense and the re-litigation of issues in future, related lawsuits.

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## EXISTING LAW

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In 2003, this legislature passed and the Governor signed AB 634 (Steinberg) that provides that it is the policy of the state that confidential settlement agreements are disfavored in elder abuse cases and requires a showing before the court before a confidential settlement agreement in this type of case may be recognized or enforced by the court. This bill also provides that information acquired through discovery in an elder abuse case that is protected from disclosure by a stipulated protective order shall remain subject to the protective order, except for information that is evidence of elder abuse. (Code of Civil Procedure § 2031.1 and 2031.2)

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## AUTHOR'S STATEMENT

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Consumers have the right to know about defective products, environmental polluters, unsafe pharmaceuticals, and sexual misconduct so they can protect themselves and their families from unnecessary injury and death. Innocent victims and their families have suffered long enough. AB 1700 is about protecting the health and safety of Californians – it's as simple as that.

**Supporters:** Office of the Attorney General, Consumers Union, Consumers for Auto Reliability and Safety, Los Angeles County District Attorney's Office, Planning and Conservation League, Gray Panthers, DES Action, Trauma Foundation, Homeowners Against Deficient Dwellings

**Chief Witness:** Richard Zitrin, Adjunct Professor of Law, UC Hastings and University of San Francisco